

1 JAMES V. FAZIO, III (CSB NO. 183353)
2 jamesfazio@sandiegoplaw.com
3 TREVOR Q. CODDINGTON, PH.D. (CSB NO. 243042)
4 trevorcoddington@sandiegoplaw.com
5 SAN DIEGO IP LAW GROUP LLP
6 12526 High Bluff Drive, Suite 300
7 San Diego, CA 92130
8 Telephone: (858) 792-3446
9 Facsimile: (858) 792-3447

10 Attorneys for Plaintiff
11 IMAGEWARE SYSTEMS, INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 IMAGEWARE SYSTEMS, INC., a Delaware
15 corporation,

16 Plaintiff,

17 vs.

18 WCC SERVICES US, INC., a Delaware
19 corporation; WCC GROUP, B.V., a
20 Netherlands corporation; and DOES 1
21 through 10, inclusive,

22 Defendants.

CASE NO. **'13CV0309 DMS JMA**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff ImageWare Systems, Inc., (“ImageWare”) hereby complains of WCC Services
2 US, Inc. (“WCC Services”), WCC Group B.V., (“WCC Group”), and DOES 1 through 10
3 (collectively, “Defendants”), and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action for patent infringement under the patent laws of the United States,
6 35 U.S.C. § 271, *et seq.*

7 **THE PARTIES**

8 2. ImageWare is a publicly-traded software company based in San Diego, California
9 that develops, markets and sells highly innovative technology solutions for the identity
10 management industry, particularly for government, border control, healthcare, financial services,
11 and electronic and mobile commerce applications. ImageWare’s flagship product is its IWS™
12 Biometric Engine®, which is the world’s first and only patented multi-modal, device- and
13 algorithm-independent biometric fusion platform that can search for, screen and authenticate
14 individuals using more than a dozen biometric modalities, including fingerprint, finger vein,
15 palm vein, face, and iris (among others). ImageWare’s suite of multimodal biometric fusion
16 products and software provide optimized identity enrollment, management and authentication
17 solutions for a variety of applications, including secure credentialing, controlled access, national
18 identification, border control, watch list, voter registration, driver license, and airport security
19 purposes (among many others). ImageWare is organized and existing under the laws of the State
20 of Delaware, with its principal place of business located at 10815 Rancho Bernardo Road, Suite
21 310, San Diego, California 92127.

22 3. ImageWare is informed and believes and based thereon alleges that Defendant
23 WCC Services is a corporation organized and existing under the laws of the State of Delaware,
24 with its principal place of business located at 228 Hamilton Ave, #300, Palo Alto, California
25 9430.

26 4. ImageWare is informed and believes and based thereon that Defendant WCC
27 Group is a corporation organized and existing under the laws of the Country of The Netherlands,
28 with its principal place of business located at Savannahweg 17, 3542 AW Utrecht, The

1 Netherlands.

2 5. ImageWare is informed and believes and based thereon that WCC Services is a
3 wholly owned subsidiary of WCC Group.

4 6. ImageWare is ignorant of the true names and capacities of the parties sued herein
5 as DOES 1 through 10, inclusive, whether individual, corporate or otherwise, and therefore sues
6 these defendants by such fictitious names. ImageWare will amend the complaint to assert their
7 true names when they have been ascertained. ImageWare is informed and believes and based
8 thereon alleges that all defendants sued herein as DOES 1 through 10 are in some manner
9 responsible for the acts and omissions alleged herein.

10 **JURISDICTION AND VENUE**

11 7. This Court has original and exclusive subject matter jurisdiction over this action
12 under 28 U.S.C. §§ 1331 and 1338(a).

13 8. This Court has personal jurisdiction over the Defendants because they have
14 conducted and are conducting systematic and continuous business in California and within this
15 District, and because Defendants have committed patent infringement in California and within
16 this District by making, selling, offering for sale, importing, and distributing (among other things)
17 ELISE ID, a platform for multimodal fusion for the identification and screening of individuals.

18 9. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because
19 Defendants have regularly transacted business in California and within this District, because
20 certain of the acts complained of herein occurred in California and within this District, and
21 because Defendants derive and seek to derive revenue from sales of infringing products sold in
22 California and within this District. Defendants' customers and partners include without limitation
23 Creative Information Technology, Inc., Alutiiq, LLC, which has an office in San Diego located at
24 4247 Ponderosa Avenue, San Diego, California 92123, Robert Half Legal, which has an office in
25 San Diego, California and Adecco, which has two offices in San Diego, and Accenture, which has
26 an office in San Diego, California.

27 10. ImageWare is informed and believes and based thereon alleges that each of the
28 Defendants WCC Services and WCC Group was and is the partner, agent and/or servant of the

1 other and was at all relevant times acting within the course and scope of such agency.

2 ImageWare is further informed and believes and based thereon alleges that WCC Services and
3 WCC Group are jointly and severally liable to ImageWare by reason of the acts and misconduct
4 of each other as alleged herein.

5 **GENERAL ALLEGATIONS**

6 11. On November 20, 2007, the United States Patent & Trademark Office ("PTO")
7 duly and lawfully issued U.S. Patent No. 7,298,873, entitled "Multimodal Biometric Platform"
8 ("the '873 patent"). ImageWare is the owner by assignment of the '873 patent, a copy of which is
9 attached hereto as Exhibit A.

10 12. On April 22, 2008, the PTO duly and lawfully issued U.S. Patent No. 7,362,884,
11 entitled "Multimodal Biometric Analysis" ("the '884 patent"). ImageWare is the owner by
12 assignment of the '884 patent, a copy of which is attached hereto as Exhibit B.

13 13. On September 29, 2009, the PTO duly and lawfully issued U.S. Patent No.
14 7,596,246, entitled "Multimodal Biometric Platform" ("the '246 patent"). ImageWare is the
15 owner by assignment of the '246 patent, a copy of which is attached hereto as Exhibit C.

16 14. On October 20, 2009, the PTO duly and lawfully issued U.S. Patent No.
17 7,606,396, entitled "Multimodal Biometric Platform" ("the '396 patent"). ImageWare is the
18 owner by assignment of the '396 patent, a copy of which is attached hereto as Exhibit D.

19 15. ImageWare is informed and believes and based thereon alleges that Defendants'
20 products including ELISE ID and certain peripheral hardware and software infringe one or more
21 claims of the '873, '884, '246 and '396 patents. ImageWare is further informed and believes and
22 thereon alleges that Defendants' infringement is willful.

23 **FIRST CLAIM FOR RELIEF**

24 **(Infringement of U.S. Patent No. 7,298,873)**

25 **(Against All Defendants)**

26 16. ImageWare repeats, realleges and incorporates by reference the allegations of
27 paragraphs 1 through 15 as though set forth fully herein.

28 17. This claim is for patent infringement under the Patent Laws of the United States,

1 Title 35 of the United States Code.

2 18. ImageWare is informed and believes and based thereon alleges that Defendants
3 WCC Services and WCC Group, by and through their agents, officers, directors, employees and
4 servants, have been and are currently willfully and intentionally infringing the '873 patent by
5 (a) making, using, offering to sell, and/or selling multimodal biometric software applications such
6 as ELISE ID that are covered by at least one claim of the '873 patent; (b) actively inducing direct
7 infringement of the '873 patent; and/or (c) importing, offering to sell, or selling one or more
8 components of multi-modal biometric applications such as ELISE ID, knowing such components
9 to be especially made or adapted for use in infringing the '873 patent and not staple articles or
10 commodities suitable for substantial noninfringing use. Defendants WCC Services and WCC
11 Group's acts constitute infringement of the '873 patent in violation of 35 U.S.C. §§271(a), (b)
12 and/or (c).

13 19. ImageWare is further informed and believes and based thereon alleges that if and
14 to the extent WCC Services and/or WCC Group is not infringing directly, WCC Services and/or
15 WCC Group is infringing indirectly by contributing to and/or inducing direct infringers, including
16 without limitation customers and/or partners Creative Information Technology, Inc., and Alutiq,
17 LLC, to infringe the '873 patent. ImageWare is further informed and believes and based thereon
18 alleges that WCC Services and/or WCC Group is knowingly inducing direct infringement and has
19 the specific intent to encourage another's direct infringement of the '873 patent by (among other
20 things) designing, developing and selling products including without limitation ELISE ID to
21 customers, vendors and retailers for the purpose of performing multimodal biometric identity
22 matching, and/or by making, using, selling, importing and offering to sell products including
23 without limitation ELISE ID that perform multimodal biometric identity matching. ImageWare is
24 further informed and believes and based thereon alleges that WCC Services and/or WCC Group's
25 ELISE ID is a material component of ImageWare's patented methods and/or systems and that
26 ELISE ID is not capable of substantial non-infringing use.

27 20. ImageWare is informed and believes and based thereon alleges that Defendants
28 WCC Services and WCC Group's infringement will continue unless enjoined by this Court.

1 21. ImageWare is informed and believes and based thereon alleges that Defendants
2 WCC Services and WCC Group have derived and received, and will continue to derive and
3 receive, gains, profits and advantages from the alleged acts of infringement in an amount not
4 presently known to ImageWare but in excess of the jurisdictional requirement of this Court. By
5 reason of the aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary
6 relief in an amount to be determined at trial but in excess of the jurisdictional requirement of this
7 Court.

8 22. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
9 suffer great and irreparable injury for which there is no adequate remedy at law.

10 **SECOND CLAIM FOR RELIEF**

11 **(Infringement of U.S. Patent No. 7,362,884)**

12 **(Against All Defendants)**

13 23. ImageWare repeats, realleges and incorporates by reference the allegations of
14 paragraphs 1 through 22 as though set forth fully herein.

15 24. This claim is for patent infringement under the Patent Laws of the United States,
16 Title 35 of the United States Code.

17 25. ImageWare is informed and believes and based thereon alleges that Defendants
18 WCC Services and WCC Group, by and through their agents, officers, directors, employees and
19 servants, have been and are currently willfully and intentionally infringing the '884 patent by
20 (a) making, using, offering to sell, and/or selling multi-modal biometric applications such as
21 ELISE ID that are covered by at least one claim of the '884 patent; (b) actively inducing direct
22 infringement of the '884 patent; and/or (c) importing, offering to sell, or selling one or more
23 components of multi-modal biometric applications such as ELISE ID, knowing such components
24 to be especially made or adapted for use in infringing the '884 patent and not staple articles or
25 commodities suitable for substantial noninfringing use. Defendants WCC Services and WCC
26 Group's acts constitute infringement of the '884 patent in violation of 35 U.S.C. §§271(a), (b)
27 and/or (c).

28 26. ImageWare is further informed and believes and based thereon alleges that if and

1 to the extent WCC Services and/or WCC Group is not infringing directly, WCC Services and/or
2 WCC Group is infringing indirectly by contributing to and/or inducing direct infringers, including
3 without limitation customers and/or partners Creative Information Technology, Inc., and Alutiq,
4 LLC, to infringe the '884 patent. ImageWare is further informed and believes and based thereon
5 alleges that WCC Services and/or WCC Group is knowingly inducing direct infringement and has
6 the specific intent to encourage another's direct infringement of the '884 patent by (among other
7 things) designing, developing and selling products including without limitation ELISE ID to
8 customers, vendors and retailers for the purpose of performing multimodal biometric identity
9 matching, and/or by making, using, selling, importing and offering to sell products including
10 without limitation ELISE ID that perform multimodal biometric identity matching. ImageWare is
11 further informed and believes and based thereon alleges that WCC Services and/or WCC Group's
12 ELISE ID is a material component of ImageWare's patented methods and/or systems and that
13 ELISE ID is not capable of substantial non-infringing use.

14 27. ImageWare is informed and believes and based thereon alleges that Defendants
15 WCC Services and WCC Group's infringement will continue unless enjoined by this Court.

16 28. ImageWare is informed and believes and based thereon alleges that Defendants
17 WCC Services and WCC Group have derived and received, and will continue to derive and
18 receive, gains, profits and advantages from the alleged acts of infringement in an amount not
19 presently known to ImageWare but in excess of the jurisdictional requirement of this Court. By
20 reason of the aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary
21 relief in an amount to be determined at trial.

22 29. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
23 suffer great and irreparable injury for which there is no adequate remedy at law.

24 **THIRD CLAIM FOR RELIEF**

25 **(Infringement of U.S. Patent No. 7,596,246)**

26 **(Against All Defendants)**

27 30. ImageWare repeats, realleges and incorporates by reference the allegations of
28 paragraphs 1 through 29 as though set forth fully herein.

1 31. This claim is for patent infringement under the Patent Laws of the United States,
2 Title 35 of the United States Code.

3 32. ImageWare is informed and believes and based thereon alleges that Defendants
4 WCC Services and WCC Group, by and through their agents, officers, directors, employees and
5 servants, have been and are currently willfully and intentionally infringing the '246 patent by
6 (a) making, using, offering to sell, and/or selling multi-modal biometric applications such as
7 ELISE ID that are covered by at least one claim of the '246 patent; (b) actively inducing direct
8 infringement of the '246 patent; and/or (c) importing, offering to sell, or selling one or more
9 components of multi-modal biometric applications such as ELISE ID, knowing such components
10 to be especially made or adapted for use in infringing the '246 patent and not staple articles or
11 commodities suitable for substantial noninfringing use. Defendants WCC Services and WCC
12 Group's acts constitute infringement of the '246 patent in violation of 35 U.S.C. §§271(a), (b)
13 and/or (c).

14 33. ImageWare is further informed and believes and based thereon alleges that if and
15 to the extent WCC Services and/or WCC Group is not infringing directly, WCC Services and/or
16 WCC Group is infringing indirectly by contributing to and/or inducing direct infringers, including
17 without limitation customers and/or partners Creative Information Technology, Inc., and Alutiq,
18 LLC, to infringe the '246 patent. ImageWare is further informed and believes and based thereon
19 alleges that WCC Services and/or WCC Group is knowingly inducing direct infringement and has
20 the specific intent to encourage another's direct infringement of the '246 patent by (among other
21 things) designing, developing and selling products including without limitation ELISE ID to
22 customers, vendors and retailers for the purpose of performing multimodal biometric identity
23 matching, and/or by making, using, selling, importing and offering to sell products including
24 without limitation ELISE ID that perform multimodal biometric identity matching. ImageWare is
25 further informed and believes and based thereon alleges that WCC Services and/or WCC Group's
26 ELISE ID is a material component of ImageWare's patented methods and/or systems and that
27 ELISE ID is not capable of substantial non-infringing use.

28 34. ImageWare is informed and believes and based thereon alleges that Defendants

1 WCC Services and WCC Group's infringement will continue unless enjoined by this Court.

2 35. ImageWare is informed and believes and based thereon alleges that Defendants
3 WCC Services and WCC Group have derived and received, and will continue to derive and
4 receive, gains, profits and advantages from the alleged acts of infringement in an amount not
5 presently known to ImageWare but in excess of the jurisdictional requirement of this Court. By
6 reason of the aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary
7 relief in an amount to be determined at trial.

8 36. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
9 suffer great and irreparable injury for which there is no adequate remedy at law.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Infringement of U.S. Patent No. 7,606,396)**

12 **(Against All Defendants)**

13 37. ImageWare repeats, realleges and incorporates by reference the allegations of
14 paragraphs 1 through 36 as though set forth fully herein.

15 38. This claim is for patent infringement under the Patent Laws of the United States,
16 Title 35 of the United States Code.

17 39. ImageWare is informed and believes and based thereon alleges that Defendants
18 WCC Services and WCC Group, by and through their agents, officers, directors, employees and
19 servants, have been and are currently willfully and intentionally infringing the '396 patent by
20 (a) making, using, offering to sell, and/or selling multi-modal biometric applications such as
21 ELISE ID that are covered by at least one claim of the '396 patent; (b) actively inducing direct
22 infringement of the '396 patent; and/or (c) importing, offering to sell, or selling one or more
23 components of multi-modal biometric applications such as ELISE ID, knowing such components
24 to be especially made or adapted for use in infringing the '396 patent and not staple articles or
25 commodities suitable for substantial noninfringing use. Defendants WCC Services and WCC
26 Group's acts constitute infringement of the '396 patent in violation of 35 U.S.C. §§271(a), (b)
27 and/or (c).

28 40. ImageWare is further informed and believes and based thereon alleges that if and

1 to the extent WCC Services and/or WCC Group is not infringing directly, WCC Services and/or
 2 WCC Group is infringing indirectly by contributing to and/or inducing direct infringers, including
 3 without limitation customers and/or partners Creative Information Technology, Inc., and Alutiq,
 4 LLC, to infringe the '396 patent. ImageWare is further informed and believes and based thereon
 5 alleges that WCC Services and/or WCC Group is knowingly inducing direct infringement and has
 6 the specific intent to encourage another's direct infringement of the '396 patent by (among other
 7 things) designing, developing and selling products including without limitation ELISE ID to
 8 customers, vendors and retailers for the purpose of performing multimodal biometric identity
 9 matching, and/or by making, using, selling, importing and offering to sell products including
 10 without limitation ELISE ID that perform multimodal biometric identity matching. ImageWare is
 11 further informed and believes and based thereon alleges that WCC Services and/or WCC Group's
 12 ELISE ID is a material component of ImageWare's patented methods and/or systems and that
 13 ELISE ID is not capable of substantial non-infringing use.

14 41. ImageWare is informed and believes and based thereon alleges that Defendants
 15 WCC Services and WCC Group's infringement will continue unless enjoined by this Court.

16 42. ImageWare is informed and believes and based thereon alleges that Defendants
 17 WCC Services and WCC Group have derived and received, and will continue to derive and
 18 receive, gains, profits and advantages from the alleged acts of infringement in an amount not
 19 presently known to ImageWare but in excess of the jurisdictional requirement of this Court. By
 20 reason of the aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary
 21 relief in an amount to be determined at trial.

22 43. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
 23 suffer great and irreparable injury for which there is no adequate remedy at law.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, ImageWare prays for judgment against all Defendants as follows:

26 (a) An Order adjudging Defendants to have infringed the '873, '884, '246 and '396
 27 patents under 35 U.S.C. § 271;

28 (b) An Order adjudging Defendants to have willfully infringed the '873, '884, '246

1 and '396 patents under 35 U.S.C. § 271;

2 (c) A permanent injunction under 35 U.S.C. § 283 enjoining Defendants, their
3 respective officers, directors, agents, servants, employees and attorneys, and those persons acting
4 in concert or participation with Defendants, from directly or indirectly infringing the '873, '884,
5 '246 and '396 patents in violation of 35 U.S.C. § 271;

6 (d) That Defendants account for all damages by Defendants' infringement of the '873,
7 '884, '246 and '396 patents in violation of 35 U.S.C. § 271, and that Defendants pay to
8 ImageWare all damages suffered by ImageWare;

9 (e) An order for a trebling of damages and/or exemplary damages due to Defendants'
10 willful misconduct under 35 U.S.C. § 284;

11 (f) An Order adjudicating that this is an exceptional case;

12 (g) An award to ImageWare of the attorneys' fees and costs incurred by ImageWare in
13 connection with this action under 35 U.S.C. § 285;

14 (h) An award of pre-judgment and post-judgment interest and costs of this action
15 against Defendants;

16 (i) For such other and further relief as the Court deems just and proper.

17 Dated: February 7, 2013

SAN DIEGO IP LAW GROUP LLP

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19 By: /s/James V. Fazio, III

JAMES V. FAZIO, III
TREVOR Q. CODDINGTON, PH.D.

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21 Attorneys for Plaintiff
22 IMAGEWARE SYSTEMS, INC.
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff ImageWare Systems, Inc. hereby demands a trial by jury of all issues so triable.

Dated: February 7, 2013

SAN DIEGO IP LAW GROUP LLP

By: /s/James V. Fazio, III

JAMES V. FAZIO, III
TREVOR Q. CODDINGTON, PH.D.

Attorneys for Plaintiff
IMAGEWARE SYSTEMS, INC.